

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

JULY 13, 2017

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Bloom, “here”; Mr. Hansen, “here”; Mr. Albert, “here”; Mr. Ross, “here”; and Mr. Lee “here”.

Members absent: Ed Hammer

County staff members present: Pete Wegner, Assistant Director and Tracy Hartman, County Clerk.

Other individuals present: See Sign in Sheet.

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Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin Open Meeting Law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment is made up of five regular members who are here today. Those who wish to testify in this matter should stand at this time and will be sworn in.

Chairman Harland Lee swore in Pete Wegner, Ed Cottingham and Tom Mc Elmeel.

Secretary Phil Albert read the notice of public hearing for Appeal No. 17-001 of Thomas Mc Elmeel, owner, to appeal the denial of a Zoning permit to build a garage four feet from the right-of-way of Albi Lane. The property is located at 7324 Albi Lane, further described as Lot 47 of Northwoods Plat, Section 3, T38N, R11E, PIN TL 2290, Town of Three Lakes, Oneida County, Wisconsin.

Oneida County Board of Adjustment Rules of Procedure, Section 17.05(12), Chapter 17, Oneida County Code of Ordinances, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause immediate peril to life or property.

Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 a.m. prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present for the inspection.

Copy of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, Wisconsin. The Oneida County Zoning and Shoreland protection ordinance is available on the internet.

Secretary Albert stated that all media outlets were properly notified of the hearing and site visit.

Observations by the board, read by Secretary Albert. Site visit was conducted at approximately 9:50 to 11:15; I’m sorry 10:15 this morning at the site 7324 Albi Lane Three Lakes. Owner was present, no other public member or members, other than the Board of Adjustment, were present. Staff accompanying the Board of Adjustment, Kurt Bloss was with us. The observations at the time in terms of property boundaries being adequately marked it was difficult to determine the lot lines, other than finding the iron stake, property stake, across the road was the only property line that was properly identified.

Highway/road right-of-way adequately marked, no, primarily because it is a gravel and unfinished roadway. Well and sanitary facilities were located on the property and marked. The outline of the construction was laid out with a yellow rope although, with measurements from the iron stake, the location of the proposed garage was in question. There is an existing structure on the property, being their home. The proposed garage 24x30 foot is approximately 144 feet from the high water mark. It was difficult, again, to identify the sideline or the side boundary of the property as that stake could not be found and the problem that the road ends and is gravel besides being poorly maintained it was difficult to determine the distance from the road right-of-way. In terms of centerline of the road, other than the measurement from the iron stake on the opposite side of the road was the only appropriate or proper measurement that could be taken. I am submitting, as exhibit A, the map and measurements that were part of our packets so that the measurements therein contained can be noted as part of the testimony. In terms of the topography and condition of the land surface it is, as I say, a gravel road with deep, steep declines on all sides of the property, not only to the lakeside but certainly on the opposite side of the roadway. There are steps open to the lakeside of the property and they likewise are very steep. The roadway does not extend beyond the end of the property line there although it is apparently owned by the Town of Three Lakes and the extension of that road would go down a very steep incline to roadways below it. One question that did arise during the board of adjustments site visit was if there is a restriction between or would be a restriction between the existing home property or structure and the proposed garage. On the map, that we were provided it shows a four-foot distance between the two. The existing and the proposed structure and I guess there is a question whether there is any type of ordinance or state fire code or whatever in terms of distance between two structures on the property.

Mr. Wegner: Not under my ordinance.

Secretary Albert: That concludes the notice of public hearing and the observations from the site visit.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

**SWORN TESTIMONY-APPELLANT.**

Mr. Mc Elmeel: I'm Tom Mc Elmeel. I am the owner of the property. In '92, I bought the property, in '95 I built the house. I put an addition onto the house in 2015. I have a couple of times asked the Town to vacate that road so I could not have restriction from the road. That has been denied for me twice, once in 2010 and again in 2015. I'm trying to get a place where I can come up here and live permanently when I retire. My wife and I would like to have a place to put our cars. We have exhausted the possibility of putting it by the porch and between the septic system. We talked to the people in the plumbing up here in the zoning, there is not room to put one there, and no variance can be given because of the secondary system. Therefore, for me it's the only place on the property it fits. I don't think I'd do any public harm. It would make the road somewhat narrower from its setbacks except as you saw this morning the neighbor's got a variance for a septic system that actually extends fifteen feet

into the road, so the roads already been narrowed. So as far as safety vehicles and stuff getting up to the home and being a public problem, a public nuisance I don't see my garage being anything to that. I think that's already been done by the property previous to that. The town has told me on several occasions that they will never finish that road. You saw the steep hill, and they never will do that. The lot next to me is accessed only by that finished road and the Town has told me that they will come in off of Bonkowski to complete that road if it's ever requested. I believe my property will always be at the end of the road and for me I don't see any reason that we're causing any harm to anybody else by putting the structure a little bit closer. I know some of the things were marked incorrectly this morning that was my problem. I thought that the red stake that was out there was my property line. If that's setback that's fine I can move that building back to make sure that it is four feet back, it doesn't matter because it fits between there and the road. I used that as my measuring stick when I laid out the garage, apparently my error but I thought that was my stake.

Mr. Lee: Any questions for Tom? Hearing none at this point, I will ask you to come up and take the other chair here and give us the Town's perspective on the situation. If you could introduce yourself.

Mr. Cottingham: My name is Ed Cottingham. I am currently the Chair of the Plan Commission. Understand that over time people cycle in and out and have multiple hats so when I give you a chronological listing of what had taken place names will go in and out. People, myself I was on the plan commission back in 2010. I was also on the Zoning Advisory Committee. I resigned and now I'm back on the Plan Commission as the Chairperson and other people have cycled in and out so it may get a little confusing but I will try to answer whatever questions you may need to keep this kind of organized. Back in October 7, 2010 Mr. Mc Elmeel requested that the Town abandon a section of the road behind his property. The Town plows that road and plows the snow off and down that road and they also turn around so when he requested that we abandon it we would not have been able to finish plowing the road, turn around and service the other properties. Therefore, the Advisory Committee went out, looked at his request and there was a motion and a second for the following: The Town should not abandon one section of a road that services other lots on the road. Snow removal/road maintenance would be severely restricted. The Town should not set a precedent of abandoning sections of a road. The Town should rename this section of Olson Road. So it was Olson Road at one time, and the reason was at the bottom of the hill was Olson Road and this was a spur off of Olson road and it was confusing for safety reasons, so it was renamed. The Town Clerk should notify the property owners that they cannot use the road as a parking lot for their personal property. I think you may have seen the same thing we saw seven years ago; that people are encroaching on the Town road and you can't find the identifying markers where the lot lines are without having it resurveyed. Therefore, the Zoning Advisory Committee passed the motion to send it onto the Plan Commission to not accept the vacation of the road. Tim Rutzen was the shop foreman at the time. We took him out there to review it with him because of safety reasons for his people and access to clearing the road and he also agreed that the road should not be abandoned. That was October 7. October 14 Three Lakes Plan Commission...

Mr. Lee: We're still in 2010.

Mr. Cottingham: We're still in 2010. Commissioner Cottingham reported on the Zoning Advisory Committee of October 7 and shared a map of Olson Road. The Zoning Advisory recommended the Plan Commission, recommended to the Plan Commission not to abandon this piece of Olson Road for the following reason: The Town should not abandon one section of road that services other lots on the road, snow removal; road maintenance would be severely restricted. The Town should not set a precedent of

abandoning sections of the road. The Town Clerk should notify people they cannot use the Town roads for their personal property. That was sent on to the Town Board. The Town Board meeting November 2, 2010. Motion made by Garbowicz and seconded to adopt finding of the Plan Commission recommendation that the piece of Olson Road described on the agenda not be abandoned for the following reasons and I won't repeat them again because they just repeated the same things, unless you want me to repeat it.

Mr. Lee: Please don't.

Mr. Cottingham: So that was the end of it until August 17, 2016. Town of Three Lakes Road Ordinance Committee, discuss Mc Elmeel's request for vacation of the end of Albi Lane, now it's Albi Lane from Olson Road. Chairman Volk opened discussion by deferring to Commissioner Cottingham for a history of the owners previous road vacation requests. Noting that nothing has changed in terms of the situation over the years, and that the Town is not in any position of vacating sections of a road, the request was denied. There was a vote and it was all in favor of not abandoning it. August 23, 2016, Three Lakes Plan Commission, review Mc Elmeel request to vacate the end of Albi Lane. Discussion began with Chairman Boehm; Jeff Boehm now is the Chairman of the Plan Commission, deferring to Commissioner Volk and Slizewski. Slizewski is now the shop foreman, he took over for Tim Rutzen. For information from the previous Road Ordinance Sub-Committee meeting when they discussed the same topic. Discussion continued including snow removal and snow melt issues, and the possible option of the landowners asking Oneida County for variance. Motion by Wallschlaeger, seconded by Slizewski to deny vacating the property on Albi Lane considered a Town Road as it stands. Three Lakes Town Board of Supervisors September 6, 2016, Town Board reviewed the Plan Commission recommendations to deny the request of Tom Mc Elmeel to vacate the property on Albi Lane considered a Town road. Motion by Supervisor Martineau seconded by Volk to deny the request, motion carried 5-0. There has been many groups of people who have looked at this. They have all agreed we should not abandon the road. Any restriction of that road would impair snow removal, the safety of the people doing that and I would request that you honor everybody's observation and voting at the town level and now I understand at the County Zoning level to not accept this request.

Mr. Lee: Was at any time during those proceedings that you just outlined, was it requested by Mr. Mc Elmeel to put a garage where he is talking about today and well, let's hear your answer to that and then I have another question.

Mr. Cottingham: As far as I know, it did not come past me, at the Plan Commission, to put a garage within the Town right-of-way. Now I asked the shop foreman to come today but he is out of town and he could speak to he does not want anything sitting in the Town right-of-way. So no, it didn't come to the Plan Commission that he wanted, that Mr. Mc Elmeel wanted to put his garage within the town right-of-way. This is all new.

Mr. Lee: So, the idea of a garage didn't come up in 2010 or 2016. This is all recently that has come up, is that right.

Mr. Cottingham: That is correct, that is correct.

Mr. Lee: And your discussions with the Town Foreman, who is in charge of snow plowing and all that kind of stuff, his opinion is that there should not be any encroachment on...

Mr. Cottingham: That is correct.

Mr. Lee: On the road, is that right?

Mr. Cottingham: That is correct.

Mr. Lee: Questions for Ed, anybody?

Mr. Albert: Ed, there is a claim that there is encroachment on the adjacent property owner. Is that true or false?

Mr. Cottingham: I know that somebody gave a variance to put a septic field, but that is standard, that happens all of the time.

Mr. Wegner: Yeah, that's a different type of variance.

Mr. Cottingham: And the state issues that, not...interrupted by Mr. Albert.

Mr. Albert: It's difficult to determine where the encroachment, if there is encroachment, where it is just based on....interrupted by Mr. Cottingham.

Mr. Cottingham: Right, and if it's a septic field it does not pose a restriction to a snowplow going down the road.

Mr. Albert: Town road, 50 foot width, is that standard.

Mr. Cottingham: It varies; it's varied within the Town.

Mr. Albert: The only property stake, which we believe is across the road, how can you define who has the authority?

Mr. Cottingham: Why didn't Mc Elmeel have it surveyed so he would know exactly what he is asking for?

Mr. Albert: Well, it also comes into the question in terms of how close he would be to his boundary line with his adjacent neighbor so we... Cut off by Mr. Cottingham.

Mr. Cottingham: We're not denying him the use of his property.

Mr. Hanson: Related to that, the plan that we have shows that the road is 50 feet there.

Mr. Cottingham: It could be, I don't know, I didn't review how wide it is for this meeting. I know that our roads vary in width depending on when it was platted and when it was surfaced. Some of them are wider, some of them are narrower, and I think Pete can.

Mr. Wegner: Yeah I think in this particular location for this parcel the survey it is 50 feet.

Mr. Lee: And this is an official survey?

Mr. Mc Elmeel: That survey was done by Kip Soder and filed back in 2016 when I made the request so I... interrupted by Cottingham

Mr. Cottingham: And understand that there is an adjacent, at the top of the hill and that road services that portion of that property, so if someone bought that property at some point in time and wanted to put a house up on top of the hill that road would service them, if we start blocking the road.

Mr. Albert: So your saying actually, as you face the property there would be another property to the left. Okay but this property over here, the end of the road is basically over here. You're facing the property in question right now, to the left of that there is another property that is...

Mr. Wegner: Undeveloped.

Mr. Cottingham: Undeveloped.

Mr. Albert: That has to be accessed through Albi, that's the only access that the property would have.

Mr. Cottingham: Uh, other than us extending the road down the hill and again we are not obligated to do that.

Mr. Lee: That would be quite a job pushing that down that hill.

Mr. Cottingham: Well, yeah.

Mr. Lee: Down that hill.

Mr. Cottingham: Yeah and it would be a real problem.

Mr. Lee: And chances are you are never going to do that.

Mr. Cottingham: Right and it would be a real problem, someone trying to get up the hill too.

Mr. Mc Elmeel: The town had told me they would always finish that road from the lower road if they had to.

Mr. Lee: Any other questions for the town? Tom, do you have any comments regarding

Mr. Mc Elmeel: The only comment I would say is Ed was asking me why didn't I have it surveyed and you guys have the survey that Kip did in 2016. So I did have it and you have it in your hands. And he also said he doesn't want me encroaching on the road. I'm not asking to go on the road; I'm asking to be four feet off the road, so I'm not encroaching onto the road...

Mr. Cottingham: But you're in the town right-of-way.

Mr. Lee: On the right-of-way

Mr. Mc Elmeel: I'm not even planning to come onto the Town right-of-way. I want to be four feet from the Town right-of-way, not 20 feet. So I'm not planning on encroaching the 50-foot line at all, so it's 4 feet away from that. I'm required to be 20 feet, I'm asking for four so I'm not encroaching onto the Town Road.

Mr. Lee: How far do your right-of-way go from the side of the road?

Mr. Cottingham: It's usually 12 feet from...

Mr. Mc Elmeel: Twenty feet is the ordinance, that's what I'm asking for the variance from.

Mr. Wegner: Yeah but he's asking what is the developed portion of that road.

Mr. Lee: I'm wondering how far does the right-of-way extend from the side of the road, if the road is 50 feet across how far does the...

Mr. Mc Elmeel: The 50 feet is the right-of-way.

Mr. Lee: That's it there's nothing beyond that.

Mr. Wegner: Nope, I see what you're saying; no it's...interrupted by Mr. Mc Elmeel.

Mr. Mc Elmeel: And then the last comment that I want to make; Ed talked about the shop foreman saying that they do a turn around with their plow. They never turn around and I had pictures of that, Diann had those. They come up, do one swipe and they come up and do a second swipe. They never do a turnaround at my house up at the end of that road, um, not in all of the years that I've been there. So, so that's not true and like I said the property next to me already has narrowed that road by 15 feet. So they don't come up, they come up two swipes on the other side and it's done. No impediment of snow plowing would happen at all.

Mr. Lee: Any comment to that?

Mr. Cottingham: No, it's just that we have another situation where a garage is sitting in the town right-of-way and it's a straight shot; it's not a dead end and we have problems maneuvering through to remove snow without taking out the garage. We have a house that was in the wetlands that the Board of Adjustments, years ago, allowed them to move it into the town right-of-way and we now plow the snow up on the guy's porch, practically, because of a bad decision from the Board of Adjustments at that time.

Mr. Lee: Well I'm assuming that your plow trucks are, I live in the town of Hazelhurst, are at least as big as ours but as I look at this I would see that it would be very difficult to turn the truck around up on the end there. I'm more inclined to think that they would take two swipes at it.

Mr. Cottingham: And maybe as the equipment gets bigger.

Mr. Lee: You couldn't turn it around up there in my estimation.

Mr. Wegner: What do you mean by taking two swipes?

Mr. Mc Elmeel: He comes up the hill then he backs down to the bottom of the hill and then he comes up on the other side and changes his blade. He goes one side to the other and leave a two path.

Mr. Lee: Alright, I would suspect that that's how he's doing it.

Mr. Cottingham: Could be.

Mr. Mc Elmeel: And then that snow gets pushed to the end of the road.

Mr. Cottingham: I can only go by what they say they do.

Mr. Lee: Yes, I understand.

Mr. Bloom: Ed, I have a question for you. You said that the 50 feet includes the road and the right-of-way and the right-of-way is 20 feet on each side, there is something wrong with our numbers...interrupted by Mr. Cottingham.

Mr. Cottingham: Typically 12 feet.

Mr. Wegner: I don't think the actual road; it's not centered within the platted road.

Mr. Bloom: How wide is the road itself?

Mr. Cottingham: 50 feet.

Mr. Bloom: Ok and then beyond that you have a right-of-way.

Mr. Ross: No, in theory the right-of-way is 50 feet, the road that is there is not 50 feet.

Mr. Cottingham: The road is 30 feet and there's 12 feet of right-of-way.

Mr. Hansen: But the County ordinance requires a 20-foot setback from the right-of-way.

Mr. Lee: The setback is the ordinance that's in question.

Mr. Mc Elmeel: So I'm not encroaching on the Town property, I'm encroaching on the 20-foot setback.

Mr. Lee. Ok, Pete what's the Counties position?

Mr. Wegner: Well just since we're on that part of the road, if you look at this the actual road, not all roads are within the center of the right-of-way, it comes up closer to this lot than if it would jart this way. Therefore, that is probably what the town road person is concerned about, pushing snow onto or close to the garage itself. What I did is, I just looked at the property, like I always do, to see if there's alternatives or if their technically being denied reasonable use. I note that when they got the letter



from the State on the sanitary, cuz they were requesting a variance to the setback to the sanitary, they denied it but I want to believe they denied it because the alternative is underneath the existing system.

Mr. Mc Elmeel: The alternative septic.

Mr. Wegner: And then the alternative system, back in the day, you had to have one.

Mr. Mc Elmeel: You don't have to anymore.

Mr. Wegner: Well because of that being able to go underneath in most cases, they don't have a secondary site. My point is, they did not have a secondary site because of the shed that was there, that they're removing or they have removed. So that being said I put together a couple of drawings that kind of show options. If you look at the first one, called A, that drainfield, per the sanitary inspection, was only 15x40 not 12x70 and back then it was done with three pipes, now we have these things called chambers, these plastic chambers, and the benefit of that is you can have a smaller area for a system. So if you look at this diagram, if they were to move the garage kind of where the septic system is now, meeting the 20 foot setback, five foot setback to the lot line there would be two areas for an alternative system. The only reason I bring it up is because this system is old, it is 23-24 years old. I just talked to Kurt this morning, I asked on average what is an old system. He's like, if your 20 years you are pushing it for a two-bedroom system like this one. So the assumption that he wants to retire there, at some point in the near future, if not already, he's gonna need a replacement system and if he would remove the shed, he could put an alternative...interrupted by Mr. Mc Elmeel.

Mr. Mc Elmeel: I don't have a shed.

Mr. Lee: Where's the shed.

Mr. Mc Elmeel: I don't own a shed. I don't have a shed; there was never a shed on my property.

Mr. Wegner: A storage shelter?

Mr. Mc Elmeel: Oh, there was one of those fabric things one winter. It's over right where I want to put the garage now; it has nothing to do with the septic field.

Mr. Wegner: Okay, I'm reading this and it says storage shelter.

Mr. Mc Elmeel: Is that on the original survey? That Kip did.

Mr. Wegner: Yeah I believe so.

Mr. Mc Elmeel: Oh yeah that probably was up when Kip put it on there. That was a temporary cloth thing and that's gone.

Mr. Wegner: Oh, okay.

Mr. Hansen: But that was between the house and the drain field?

Mr. Mc Elmeel: That was located there for a period of time.

Mr. Wegner: Between the house and the road.

Mr. Hansen: Between the house and the road, I see.

Mr. Wegner: What you see there, a 15x35 and a 10x46 will have ample room for the first one, two chambers 9x45 feet and the second one three chambers. And then you could have the garage located as you...interrupted by Mr. Albert

Mr. Albert: Go back to the question though of whether an alternative drain field is still required, is it or is it not. It was required, apparently, at the time the permit was issued but at this point is there.

Mr. Wegner: Within the ordinance?

Mr. Albert: Yes

Mr. Wegner: No

Mr. Hansen: But if you replace the existing system there would have to be a place to put a second system.

Mr. Wegner: Yes and there's two areas, again, the language is totally different in 2004 when the permit was approved, but the area at the top here meets the 50 foot setback from the ordinary water mark. It's probably greater than that. Five feet, five feet and that would be enough room with three chambers. Same thing with this, it's ten feet from the home, five feet from the lot line, five feet from the lot line and you would be able to put it here. The only question that I had I wasn't sure where the well was. On an earlier permit, it shows it...

Mr. Mc Elmeel: The wells on the far corner of the house. It's a point well it's in the basement.

Mr. Lee: Did you mark the well?

Mr. Mc Elmeel: The well is in the basement, it's in the house.

Mr. Albert: What you've outlined is the potential garage would be located over what is currently their drain field, correct?

Mr. Wegner: A portion of, yep, or entirely. The idea is that it's getting near to its end life and it's going to have to be replaced.

Mr. Albert: But as of today, in terms of putting a structure there, over partial drain field you wouldn't do that?

Mr. Wegner: No, correct.

Mr. Mc Elmeel: Plus the other problem is my tank is right outside the house so that pipe runs across there. If I put a garage in there that would be froze every winter.

Mr. Lee: So is this a viable option or not?

Mr. Wegner: Oh definitely, I mean even if he had to move the tank to put it here it's an option. Here, this is where the tank is now, they wouldn't be driving over it and he would just pipe into the system here.

Mr. Mc Elmeel: Where would I move the tank to?

Mr. Wegner: The tanks here, right? You'd leave it there and you'd just put in your drain field then.

Mr. Mc Elmeel: You'd put a drain field right by the tank?

Mr. Lee: No you'd put the garage.

Mr. Ross: Tom, is your tank steel or concrete?

Mr. Mc Elmeel: Concrete.

Mr. Lee: This is plan A, was there a plan B?

Mr. Wegner: Yep, plan B is attach it to the house. Anything between the house, I should say this area here, is really not an option because of the slope, so again showing the drain field here, tank and it's attached to the house. If you look at it, it could be two feet or three feet deeper, 26-28 maybe and still make the 20-foot setback. And then finally I have on here Option C.

Mr. Mc Elmeel: That would require just moving all of those stairs, correct, that go down to the lake. So you would build a garage right over the top of them.

Mr. Wegner: Yep, again when they look at a variance they shouldn't be looking at whether it's the cost or it's just the property itself and how can you situate the things on that property and meet the applicable setbacks. The other thing and I guess I can ask Ed, we do have a section of the ordinance that allows a reduced setback. If the Town sees it's a pattern of development that it would reduce setback. And sometimes I've had it where it hasn't been a real pattern of development and the Town says we're just going to require a five-foot setback from the right-of-way of Albi Lane from this point to this point. But I'm imagining they probably aren't going to do that over a one-foot difference.

Mr. Cottingham: The other thing we run into is what happens when two other property owners want to do the same thing.

Mr. Lee: You know the way that you have it laid out now the doors to the garage would be facing the road and if the snowplow is coming up there, he is going to dump all of that snow right in front of your garage.

Mr. Mc Elmeel: Yes he is. I'll have to plow with the snow blower.

Mr. Lee: With one of the alternatives here, or either one of the alternatives that's not a problem.

Mr. Mc Elmeel: Correct, I'm not going to put a garage over there. It just doesn't fit for my property and our property use. I don't think it fits there, if I have to redo a septic system and all that, it's not worth it to me; I'm not going to do that.

Mr. Ross: I think the question before us is whether we allow the variance. Pete's just trying to solve problems. We're not really here to solve a problem per se. If we see all of the alternatives, it gives us a clearer conscience when we deny something sometimes. So we try to work with people to give them options. One thing that hasn't been thrown out is there is always a holding tank.

Mr. Wegner: Yes, there is a system of choice in Oneida County where they can just have a holding tank, which would open up a lot of more available area.

Mr. Ross: Put a holding tank where you are and build your garage where you want.

Mr. Albert: Do we know exactly where Albi Lane Road proper goes in terms of straight, turns is that platted? We found this stake; we never looked for this stake, if there is a stake there.

Mr. Mc Elmeel: On the opposite side?

Mr. Albert: Yes.

Mr. Mc Elmeel: Yes there is, it's a big yellow post that identifies that. It goes halfway down that hill.

Mr. Albert: A yellow post? What about an iron stake that actually is the survey?

Mr. Mc Elmeel: Um there is, this stake we found, I think the yellow post is sitting right on this stake. I've never gone down there to look for it. That's halfway down that hill. This one I marked with that gray tube this morning.

Mr. Albert: That's what I'm questioning is does the road actually take a left turn but it's the existing road structure is it straight.

Mr. Ross: See the existing road is just within the road right-of-way. That's common; a lot of road right-of-way, the road just goes in...

Mr. Wegner: It is. I have roads that are not even within the right-of-way.

Mr. Hansen: Well, the issue that I see is when we measured 50 feet, 50 feet encroaches on the site where the garage was going to be built so the right-of-way actually, the actual right-of-way includes a corner of where you want to build the garage.

Mr. Mc Elmeel: Ok, so I put the garage there because I thought that red stake was the stake. I could just move that back to the four feet off the right-of-way.

Mr. Hansen: If you move it back four feet, the edge of the garage will still be right on the right-of-way. There's no setback what so ever.

Mr. Wegner: No, based on the survey there's room there, it's just a matter of finding the stake that represents what the right-of-way.

Mr. Mc Elmeel: So I didn't find the stake but the survey allows it.

Mr. Hansen: Well there isn't really because we measured from this post right there, 50 feet takes it beyond the corner of where he wants to build a garage.

Mr. Mc Elmeel: But I can set that garage back towards my house, because if I marked it wrong because I was using that red post I could've set that back...interrupted by Mr. Albert.

Mr. Albert: By doing that your garage sits right on top of the wall of your house.

Mr. Mc Elmeel: I could make my garage 22 feet deep if I gotta move that, but there's room on the survey for that to fit. I may not have had it exactly marked cuz I went off of that red post.

Mr. Wegner: This is the red post or this is the yellow post?

Mr. Hansen: This post is marked, there is a flag sticking in this post.

Mr. Wegner: Maybe there's...that's odd...do you know if stakes moved? I do know surveyors sometimes do not agree with each other.

Mr. Mc Elmeel: There is a stake there. Kip put it there last time; I just thought it was the red one. That's why I set my garage there.

Mr. Albert: The red stake was probably put there by the electrical contractor that is putting in the buried boxes.

Mr. Lee: Any more questions for either the County, the Town or Mr. Mc Elmeel? Any final comments that you want to make sir.

Mr. Cottingham: No Thanks.

Mr. Lee: Tom?

Mr. Mc Elmeel: No

Mr. Wegner: My final comment, I would have to echo what Ed was saying. There are at least one or two sites in Three Lakes where there are five to eight feet from the driveway and when they plow, it's going right into people's front yard and there's no other option, I mean, it's a mess.

Mr. Mc Elmeel: My front yard would be open to snow plows; cuz there's wide-open space there. I mean the distance from my garage to where the plow comes would be at least 20 feet based on the

shortening of the road by the neighbor to the South cuz they gotta stay on that side. They don't come across the septic system they stay on the other side of the road that's 16-20 feet from my property.

Mr. Lee: How long have you owned this property?

Mr. Mc Elmeel: Since 1992, built the house in 95.

Mr. Albert: There is no restriction for the distance between two structures, for fire code or any other purpose.

Mr. Wegner: I'm not familiar with what UDC might state but I know that I've had permits that we've issued that need a UDC review, where we are talking this far apart, attached by a foundation.

Mr. Albert: That surprised me but that's the case.

Mr. Lee: Okay, if there are no further questions from the Board and no further comments from the Town, the County or the Appellant I will close the hearing. There will be no further testimony and the Board will discuss this situation and come to a vote. If we have questions during that discussion period, we will ask you those questions and hope that you confine your answers to that question and don't get off track cuz then I will just get mean and get you back on track. Thank you and you can stay here, you don't have to sit back just don't say anything. Discussion?

Mr. Bloom: Well, I'll tell you he owned it since '92 but he built a house in '95 and put an addition on 2015 and I quite frankly think he painted himself in the corner. He had opportunity to redesign it then and he didn't. With the garage now he wants to put it in there, I don't think its unique physical property limitations. With the public interest with the plowing, I can certainly understand the problems that this would entail and in fact, it would really create Tom problems, too, with the snow right there. Since they have use of it since '95 without a garage, I don't know if it would be any hardship or not so, that's my comment.

Mr. Lee: Anyone else?

Mr. Albert: I would agree with you John, I think there is some uniqueness to the physical property based on the drop-offs but the length of the ownership and the activity that has taken place during that ownership has an impact and I think we have to respect the Towns opinion. Consideration and decision in terms of public interest because they have apparently attested to the fact that they believe it would result in harm to the public interest. In terms of hardship, you've used the property since '92 and we are required look at the three criteria we have to align with. We have to consider the purpose of the zoning and I guess the locals determination, multiple determinations and review of the situation has to be respected so I don't see how we can meet all three of the criteria for a variance.

Mr. Hansen: I would agree, in fact for number one, trying to answer unique physical property limitations I do actually think there's at least one, maybe two alternate sites for the garage on the site. We can't accommodate number two, harm to public interest, because it would be a harm to the Town and plowing and as far as unnecessary hardship I don't think it meets that either because like John and Phil have said they've had use of the property since 1995 so you certainly had use of the property without the garage.

Mr. Ross: My only comment to that, and I thank John for getting me back on track, for a variance we have three criteria and all three have to be met. And I just don't think it really comes close to meeting at least two of the three and it only has to not meet one. And I guess the reason we grope a little bit for solutions or alternatives is this would be a pretty hard variance, I think under the circumstances, to approve. And if we've done a service for him today it's at least we've given him ideas of what he can do if we deny it and I certainly think we haven't met the three criteria to grant the variance.

Mr. Lee: On the appeal form that you filled out Tom, item number ten on the 2<sup>nd</sup> page of that includes justification for variance and that's what the gentleman are talking about and there are three. One is a hardship and that's defined what that means, the second one is physical property limitations which you know there are some and the public interest. Those three criteria are what we have to go by in terms of whether we grant a variance or not and you've heard their comments directed at those criteria. Is anyone prepared to make a motion at this time as to the decision in this case?

Mr. Albert: Well I guess based on the comments and apparently the position of the Board I think about the only motion that is to be considered is the denial of the request for a variance or the denial of the appeal. So moved.

Mr. Ross: In the motion, do we need to state those three? Haven't we in the past need to state why.

Mr. Wegner: Well I think everyone of you did.

Mr. Albert: Motion to include that criteria unique physical property limitation can only partially be met, no harm to public cannot be met and unnecessary hardship cannot be met.

Mr. Ross: I'll second the motion.

Mr. Lee: It's been moved and seconded. Any further discussion on the motion? Hearing none, I'll call the question. Mr. Bloom, "aye"; Mr. Hansen, "aye"; Mr. Ross "aye"; Mr. Albert "aye" and Mr. Lee votes "aye" as well. So the request for an appeal has been denied.

Mr. Mc Elmeel: End of the road for me.

Mr. Lee: That is it. What I was just going to say is that I would suggest that you talk with Pete about the alternatives that he has suggested, but the proposal that you have presented has been denied. There appear to be other alternatives, give it a shot, discuss it with him and see where you can go from there.

Mr. Hansen: I would also make sure you know where 50 feet from the other marker on the road is so you know where your property starts.

Mr. Mc Elmeel: I got it, it's right on the survey, I know where it is.

Mr. Lee: Is there a motion to adjourn?

**1:53 p.m. – The meeting was adjourned on a motion by Norris Ross and second by Guy Hansen; and all members voting aye.**

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**Harland Lee, Chair**

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**Phil Albert, Secretary**